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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,084	10/21/2005	Tristian Roger Thornhill	033335 R 028	2882
441 7590 12/21/2007 SMITH, GAMBRELL & RUSSELL 1130 CONNECTICUT AVENUE, N.W., SUITE 1130 WASHINGTON, DC 20036			EXAMINER HOGAN, JAMES SEAN	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 12/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/554,084

Applicant(s)

THORNHILL, TRISTIAN ROGER

Examiner

James S. Hogan

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/29/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-15,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-15,18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings were received on October 29, 2007. These drawings are not accepted, as the ambiguous opening identified as item (17) is still within the opinion of the Examiner to be not clearly shown. The Examiner recommends the addition of an enlarged view of the area on the valve metering tube.

Therefore, the drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the opening (17) in the sidewall of the distal end of the metering tube (7) distal wall must be shown or the feature(s) canceled from the claim(s). As it stands, the numeration (17) points to a likely location of the opening, but no interruption of the cross sectioning of the sidewall is shown. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-10 and 12-15, 18 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-10 and 12-15, 18 and 19 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,147,087 to Fuchs

Regarding claim 1, Fuchs discloses (see Figure 2) a dosing device having a housing, metering tube (combined device, (9)), the metering tube having an access opening (39) from the interior, the housing having a chamber (15) to hold medicament, where the metering tube extends to as dispensing position and the access opening is in communication with the chamber when the metering tube is filling. As per claim 2, the dosing device has a piston (10, 11) for drawing medicament into the metering tube. As

per claim 3, the stroke of the piston is fixed. As per claim 4, a member (7)) limits the displacement of the piston in one direction. As per claim 5, a piston (11) is within the metering tube. As per claim 6, the piston (11) is moveable with the metering tube (9). As per claim 7, a stop (7) limits the displacement of the metering tube. As per claims 8 and 9, Fuchs teaches a handheld apparatus for dispensing medicament as an atomized mist. As per claims 10, 12-15 by all accounts; in a handheld inhaler, the piston (11) retracts the metering tube with itself for a filling position, thus drawing medicament from the chamber, and then extends the tube (9) to a dispensing position and before expelling the medicament as a mist as cited above. As per claim 14, the metering tube retracts before medicament is atomized. As per claims 18 and 19, the opening (39) serves to b both draw and expel medicament.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSH
12/14/2007


KEVIN SHAVER
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